

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

XUEDAN WANG, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

THE HEARST CORPORATION,

Defendant.

12 Civ. 0793 (HB)

**DECLARATION OF RACHEL BIEN IN OPPOSITION TO DEFENDANT'S
MOTION TO STRIKE THE CLASS AND COLLECTIVE ACTION
ALLEGATIONS AND IN SUPPORT OF PLAINTIFF'S CROSS-MOTION
FOR CONDITIONAL CERTIFICATION AND COURT-AUTHORIZED
NOTICE PURSUANT TO SECTION 216(b)**

I, Rachel Bien, declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney at Outten & Golden LLP ("O&G"), counsel for Plaintiffs and opt-in Plaintiffs ("Plaintiffs") in the above-referenced action. I am an attorney in good standing admitted to practice in the State of New York and before this Court.

2. I have been one of the attorneys primarily responsible for the prosecution of this action.

3. I make the statements below based on my personal knowledge and would so testify if called as a witness at trial.

Procedural History

4. On April 4, 2012, Hearst filed a Motion to Strike the Class and Collective Action Allegations ("Motion to Strike"). ECF No. 9. In support of its Motion to Strike, Hearst included declarations from 34 magazine editors and two Human Resources employees. In order to respond to Hearst's Motion to Strike, Plaintiff sought document discovery, depositions of

Hearst's 36 declarants, and contact information for Hearst interns and their supervisors. On April 12, 2012, the Court ordered Hearst to produce its two Human Resources declarants for depositions and documents regarding the terms and conditions of its internship programs. ECF No. 15.

5. On May 8, 2012, Plaintiff raised with the Court two discovery disputes regarding Hearst's refusal to provide Plaintiff with a search term "hit list" to facilitate Plaintiff's request for responsive emails and to provide Plaintiff with a limited sampling of emails between Hearst's Human Resources personnel and interns. On May 17, 2012, Plaintiff raised an additional dispute regarding Hearst's redaction of class members' and witnesses' names in its document production. On May 24, 2012, Magistrate Judge Peck, to whom the Court referred the disputes, ordered Hearst to conduct email searches for a limited set of search terms and to produce emails between Human Resources and Human Resources interns. Judge Peck denied Plaintiffs' requests for a hit list and for unredacted versions of documents containing the names of Hearst interns. ECF No. 19. Judge Peck set June 7, 2012 as the revised deadline for Plaintiff's opposition brief.

6. In a similar case involving unpaid interns who worked for Fox Searchlight Pictures, *Glatt v. Fox Searchlight Pictures, Inc.*, No. 11 Civ. 6784 (S.D.N.Y. filed Sept. 28, 2011), the defendant requested a pre-motion conference in contemplation of a motion to strike the class and collective action allegations. In a court conference on June 4, 2012, Judge Pauley signaled that such a motion would essentially be futile. The defendant subsequently withdrew its request to file the motion. A true and correct copy of the transcript of the June 4 conference is attached hereto as Exhibit II.

7. With the Court's permission, Plaintiff will seek leave to file the proposed Second Amended Complaint to add Stephanie Skorka as a named Plaintiff. A copy of the proposed Second Amended Complaint is attached hereto as Exhibit JJ.

Exhibits

8. Attached are true and correct copies of the following documents:
- a. Attached as Exhibit A is a true and correct copy of job postings from the Facebook page of Hearst Magazines Human Resources ("Hearst Magazines Human Resources Facebook Postings") (Jan. 25, 2012), <https://www.facebook.com/HearstMagazinesHR>.
 - b. Attached as Exhibit B is a true and correct copy of a job posting for "Hearst Magazines Photo Studio Summer Internship" ("Studio D Posting") (Jan. 25, 2012), <http://www.ed2010.com/jobs/whisperjobs/2010/04/hearst-magazines-photo-studio-summer-internship>.
 - c. Attached as Exhibit C is a true and correct copy of selected pages from the Deposition of Amy Helmus Ascalon ("Helmus Dep."), May 25, 2012.
 - d. Attached as Exhibit D is a true and correct copy of selected pages from the Deposition of Scherri Roberts ("Roberts Dep."), May 21, 2012.
 - e. Attached as Exhibit E is a true and correct copy of an email regarding "Hiring Criteria for Internships" ("Hiring Criteria Email"), July 28, 2011, bates-stamped D0002588.
 - f. Attached as Exhibit F is a true and correct copy of an email chain regarding "Internship Credit Issue" ("Yale Email"), Apr. 16, 2012, bates-stamped D0004938-39.
 - g. Attached as Exhibit G is a true and correct copy of a spreadsheet created by Hearst Human Resources ("Intern List"), bates-stamped D0000026-28.
 - h. Attached as Exhibit H is a true and correct copy of an email chain regarding "Winter-Spring 2012.xlsx" ("Winter-Spring 2012 Email"), Jan. 6, 2012, bates-stamped D0003740.
 - i. Attached as Exhibit I is a true and correct copy of an email chain regarding "Intern List" ("Intern List Email"), Feb. 3, 2012, bates-stamped D0003806.
 - j. Attached as Exhibit J is a true and correct copy of an email regarding "New Intern ID Policy" ("ID Policy Email"), Sept. 29, 2010, bates-stamped D0005222-23.

- k. Attached as Exhibit K is a true and correct copy of an email chain regarding “Interns” (“Job Description Email”), Jan. 19, 2012, bates-stamped D0004630.
- l. Attached as Exhibit L is a true and correct copy of an email regarding “Interns – BAZAAR ecommerce / design + marketing” (“Bazaar Email”), Dec. 27, 2011, bates-stamped D0004009.
- m. Attached as Exhibit M is a true and correct copy of an email chain regarding “Spring Interns” (“WomansDay.com Email”), Dec. 12, 2011, bates-stamped D0004419.
- n. Attached as Exhibit N is a true and correct copy of an email chain regarding “Interns at Hearst Magazines” (“Columbia Email”), Aug. 14, 2007, bates-stamped D0005073.
- o. Attached as Exhibit O is a true and correct copy of an email regarding “Another Intern!” (“Cosmo Publisher Email”), Sept. 28, 2006, bates-stamped D0004995.
- p. Attached as Exhibit P is a true and correct copy of an email chain regarding “Rutgers Intern” (“Rutgers Intern Email”), Dec. 14, 2011, bates-stamped D0004436.
- q. Attached as Exhibit Q is a true and correct copy of an email chain regarding “Internship opportunity at Hearst” (“Princeton Email”), Feb. 8, 2012, bates-stamped D0004708.
- r. Attached as Exhibit R is a true and correct copy of an email chain regarding “Northwestern University Qatar Internship Information Needed” (“Qatar Email”), Jan. 30, 2012, bates-stamped D0003793-95.
- s. Attached as Exhibit S is a true and correct copy of an email chain regarding “Are you still handling intern questions?” (“J-1 Email”), Apr. 23, 2012, bates-stamped D0003986-87.
- t. Attached as Exhibit T is a true and correct copy of a memorandum regarding Internships (“December 2005 Memo”), dated Dec. 2, 2005, bates-stamped D0004970-71.
- u. Attached as Exhibit U is a true and correct copy of the Declaration of Ariel Nagi (“Nagi Decl.”), Apr. 24, 2012.
- v. Attached as Exhibit V is a true and correct copy of the Declaration of Stephanie Skorka (“Skorka Decl.”), Apr. 25, 2012.
- w. Attached as Exhibit W is a true and correct copy of the Declaration of Xuedan Wang (“Wang Decl.”), Apr. 20, 2012.

- x. Attached as Exhibit X is a true and correct copy of the Declaration of Jessica Stoller (“Stoller Decl.”), Apr. 26, 2012.
- y. Attached as Exhibit Y is a true and correct copy of the Declaration of Linda Behnen (“Behnen Decl.”), Apr. 25, 2012.
- z. Attached as Exhibit Z are true and correct copies of Hearst internship job postings, including CountryLiving.com Editorial Internship, Jan. 24, 2012; Elle Magazine-Spring Internship, Jan. 24, 2012; ELLEgirl.com/ELLE.com Editorial Internship, Jan. 25, 2012; Esquire Editorial Internship, Jan. 30, 2012; Good Housekeeping Fashion Internship, Jan. 12, 2012; Good Housekeeping Research Institute Editorial Internship, Jan. 24, 2012; Graphic Design Intern, Seventeen Magazine, Jan. 25, 2012; Hearst Magazines Photo Studio Summer Internship, Jan. 25, 2012; Hearst Magazines Public Relations Spring Internship, Jan. 25, 2012; Hearst Special Issues Spring Internship, Jan. 24, 2012; Hearst Specials Group Internship, Jan. 24, 2012; Spring 2012 ELLE Features Internship, Jan. 25, 2012; Housebeautiful.com Online Editorial Intern, Jan. 24, 2012; Internships at Good Housekeeping, Jan. 30, 2012; Digital Intern, Good Housekeeping, Jan. 25, 2012; Marie Claire spring ’08 features interns, Jan. 24, 2012; Marie Claire Spring 2012 Editorial Internship, Jan. 24, 2012; O Magazine Books Internship, Jan. 24, 2012; O Magazine Editorial Internship, Jan. 24, 2012; Popular Mechanics Editorial Internship, Jan. 24, 2012; Spring 2012 Country Living Editorial Internship, Jan. 25, 2012; Spring 2012 Digital Media Video Internship, Jan. 25, 2012; Spring 2012 Country Living Style & Market Internship, Jan. 25, 2012; Spring 2012 ELLE Features Internship, Jan. 25, 2012; Spring 2012 Harper’s Bazaar Features Internship, Jan. 25, 2012; Spring 2012 Harper’s Bazaar Special Project Design Internship, Jan. 25, 2012; Spring 2012 Hearst App Lab Intern, Jan. 25, 2012; Spring 2012 Hearst Digital Media Marketing Internship, Jan. 25, 2012; Spring 2012 House Beautiful Editorial/Market Interns, Jan. 25, 2012; Spring 2012 Popular Mechanics Editorial Internship, Jan. 25, 2012; Town & Country Fall Fashion Internship, Jan. 30, 2012.; Town & Country Beauty Internship, Jan. 30, 2012; Town & Country Design Internship, Jan. 30, 2012; Fall 2011 Town & Country Fashion Internship, Jan. 30, 2012; Town & Country Fashion Internship, Jan. 30, 2012; Town & Country Spring Features Internship, Jan. 30, 2012; Spring 2012 Town & Country Photo Internship, Jan. 30, 2012; Veranda Advertising/Marketing Internship, Jan. 30, 2012; Internship with Veranda Magazine, Jan. 30, 2012; Veranda Summer 2011 Internships, Jan. 30, 2012; Woman’s Day Art Internship, Jan. 30, 2012; Woman’s Day Editorial Internship, Jan. 30, 2012 (“Hearst Internship Postings”).
- aa. Attached as Exhibit AA is a true and correct copy of an email chain regarding “LIM & O Magazine Internship Information” (“LIM Email”), dated Mar. 30, 2012, bates-stamped D0004880-81.

- bb. Attached as Exhibit BB is a true and correct copy of an email chain regarding “URGENT – Spring Intern for Marketing – URGENT” (“Marketing Email”), dated Jan. 30, 2012, bates-stamped D0003791-92.
- cc. Attached as Exhibit CC is a true and correct copy of an email chain regarding “Intern question” (“Budget Email”), dated Mar. 20, 2012, bates-stamped D0005393-95.
- dd. Attached as Exhibit DD is a true and correct copy of an email regarding “Resume” (“Resume Email”), dated Jun. 19, 2006, bates-stamped D0005439.
- ee. Attached as Exhibit EE is a true and correct copy of an email regarding “New procedures” (“Cost Savings Email”), dated Dec. 4, 2008, bates-stamped D0005583-84.
- ff. Attached as Exhibit FF is a true and correct copy of U.S. Department of Labor, Wage and Hour Division, “Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act” (“Fact Sheet #71”).
- gg. Attached as Exhibit GG is a true and correct copy of New York State Department of Labor, “Fact Sheet: Wage Requirements for Interns in For-Profit Businesses” (“NYS Fact Sheet”).
- hh. Attached as Exhibit HH is a true and correct copy of an email chain regarding “Intern Incident” (“Intern Incident Email”), dated Jun. 27, 2008, bates-stamped D0005132-33.
- ii. Attached as Exhibit II is a true and correct copy of a transcript of the conference held before the Hon. William H. Pauley III on June 4, 2012 in *Glatt v. Fox Searchlight Pictures, Inc.*, No. 11 Civ. 6784 (S.D.N.Y. filed Sept. 28, 2011) (“Fox Searchlight Tr.”).
- jj. Attached as Exhibit JJ is a true and correct copy of Plaintiff’s proposed Second Amended Complaint (“Proposed SAC”).

Dated: June 7, 2012
New York, New York

/s/ Rachel Bien
Rachel Bien
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